

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-38

PROCEDURAL HISTORY

On May 17, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Yakima School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On May 21, 2019, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On June 13, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on June 14, 2019. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information. The Parent did not reply.

On July 1, 2019, OSPI requested additional documentation from the District. The District provided the requested documentation and information on July 2, 2019, and OSPI forwarded that documentation to the Parent on July 3, 2019.

OSPI considered all of the information provided by the Parent and the District as part of its investigation.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on May 18, 2018. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUE

1. Did the District provide the Student with paraeducator support consistent with his individualized education program (IEP) from December 2018 through May 13, 2019?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student served through enrollment within its jurisdiction who is eligible to receive special education services. 34 CFR § 300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be

implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

FINDINGS OF FACT

Background

1. During the 2017-2018 school year, the Student attended a District elementary school, as a first grader, where he was eligible for special education services under the category autism.¹
2. On May 23, 2018, the Student's individualized education program (IEP) team amended the Student's December 2017 IEP, without a meeting. The description of the proposed revisions stated:

[Student's] placement will change from self contained to general education with resource room services for the 2018-2019 school year. He will be assigned a 1:1 paraeducator to assist him with the transition to general education, social skills, etc. The team decided to retain [Student] as a first grader for the 2018-2019 school year to promote his successful transition. Special education transportation will end as of June 14, 2018. Also, add ESY [extended school year services].

2018-2019 School Year

3. On August 27, 2018, the District's 2018-2019 school year began.
4. During the 2018-2019 school year, the Student attended a District elementary school, repeating first grade, and continued to be eligible for special education services.
5. On November 28, 2018, the Student's IEP team developed his annual IEP. The Student's November 2018 IEP provided him with 1,350 minutes per week of 1:1 special education paraeducator support in general education settings and 390 minutes per week of 1:1 special education paraeducator support in special education settings.
6. The District was on winter break from December 20, 2018 through January 4, 2019.
7. On January 7, 2019, the Student's special education paraeducator went on maternity leave.
8. Based on documentation provided by the District, due to a shortage of substitute paraeducators, the District was unable to fill the job on a consistent basis. The District admitted it did not provide the Student with "para-educator support consistent with his...IEP from December 2018 through May 13, 2019."

¹ Although the Student was determined eligible for special education under the category of autism in February 2018, the Student's November 2018 IEP states the Student's eligibility category as "specific learning disability." It is unclear if this is a error or if the Student's eligibility category changed.

9. On January 24, 2019, the Student's quarterly progress reporting stated (in relevant part):

Reading Goal: [Student] will read 40 pre-primer...sight words with 75% accuracy.	Progress: 83% Objective met
Writing Goal: [Student] will write his first and last name from memory with correct letter formation on 4 out of 5 data days.	Progress: Student does not capitalize [first letter of his last name] and sometimes forgets to capitalize [first letter of his first name]. Student needs to work on "a" and "n." Continue with same objective, some progress made but more time needed.
Writing Goal: [Student] will write 10 short vowel...words from dictation with 80% accuracy.	Progress: 60% 6/10 words correct Continue with same objective, some progress made but more time needed.
Math calculation Goal: [Student] will add three digit numbers with regrouping for sums up to 999 using a hundred chart or manipulatives with 80% accuracy.	Progress: 95% 19/20 correctly added Objective met
Math reasoning Goal: [Student] will read digital and analogue clocks to the nearest fifteen minutes with 90% accuracy.	Progress: 100% 37/37 correct digital and analog Objective met

10. On February 7, 2019, the Student's quarterly progress reporting stated (in relevant part):

Reading Goal: [Student] will look at pictures and read short vowel...words to find the word that names each picture with 80% accuracy.	Progress: 100% on short "a" and "e" words 44% short "i" words, not yet tested short "o" or "u" Continue with same objective, some progress made but more time needed.
Reading Goal: [Student] will read short vowel words with consonant blends with 80% accuracy.	Progress: 80% 16/20 words read Objective met
Social Behavior Goal: [Student] will select a game or puzzle, ask a peer to play with him when prompted, then play together with a peer for 5 minutes or more on 2 out of 5 days.	Progress: Student has done this once with prompting Continue with same objective, some progress made but more time needed.
Social Behavior Goal: [Student] will say "Good morning", "Hi", or "Hello" when greeting adults or peers in the morning on 2 out of 5 days when prompted.	Progress: Note yet Continue with same objective, some progress made but more time needed.

11. On March 26, 2019, due to the Student's progress in his math goals, the Student's IEP team amended the November 2018 IEP to reduce the number of special education minutes for math, and increase his time in the general education setting. The team amended the IEP without meeting. The amended IEP provided him with 1,410 minutes per week of 1:1 special

education paraeducator support in general education settings and 330 minutes per week of 1:1 special education paraeducator support in special education settings.

12. Also, on March 26, 2019, the District issued a prior written notice, proposing a change to the Student’s IEP: reducing the Student’s math service minutes from 90 minutes to 30 minutes in the resource room. The reason for the change stated the Student was working at or above grade level in math. Except for the minutes of specially designed instruction in math and the paraeducator support, the rest of the IEP remained unchanged.

13. On March 28, 2019, the Student’s quarterly progress reporting stated (in relevant part):

Writing Goal: [Student] will write 10 short vowel...words from dictation with 80% accuracy.	Progress: 100% on short "i" and "o" Objective met
Reading Goal: [Student] will read 52 pre-primer...sight words with 50% accuracy.	Progress: 85% 44/52 words correctly Objective met
Reading Goal: [Student] will read 52 pre-primer DOLCH sight words with 75% accuracy.	Progress: 85% 44/52 words correctly Objective met
Writing Goal: [Student] will write his first and last name from memory with correct letter formation on 4 out of 5 data days.	Progress: 4/5 days correct Objective met
Reading Goal: [Student] will look at pictures and read short vowel...words to find the word that names each picture with 80% accuracy.	Progress: 80% 8/10 words read Objective met
Math calculation Goal: [Student] will subtract three digit numbers with numbers up to 999 with regrouping using a hundred chart or manipulatives with 80% accuracy.	Progress: 50% 6/12 correct Continue with same objective, some progress made but more time needed.
Math reasoning Goal: [Student] will read digital and analogue clocks to the nearest five minutes with 90% accuracy.	Progress: 87% 14/16 correct Continue with same objective, some progress made but more time needed.

14. On March 28, 2019, the Student’s general education reading teacher emailed the special education teacher and stated:

I just wanted to let you know that [Student] has been having a really hard time without a consistent [1:1] para[educator]. He has a hard time focusing and his interactions with others are brusque. I need to constantly remind him of the rules and not to blurt, ask to leave the classroom, stay in his seat, do his work, etc. He is rude to students who are "in his way" or don't agree with him. He is disruptive when he is frustrated and that is becoming more frequent recently. I have also noticed that his reading performance and word retention/word skills have declined. (His para[educator] was working with him on early literacy skills and memorizing sight words each week using flashcards daily in addition to

resource room reading minutes). I feel that he still requires a [1:1 paraeducator] in order for him to be included fully in the regular classroom for him to strengthen his social and academic goals.

15. Also, on March 28 2019, the Student's special education teacher forwarded the general education reading teacher's email to the District's executive director of special education (director), and copied the assistant special education director, principal, assistant principal, general education teacher, speech language pathologist (SLP), and school counselor and stated (in relevant part), "[Student's] assigned para[educator] has been out since [the] beginning of January after having a baby, and he has not had a substitute para[educator] recently because no one is taking the job, though it is listed. I verified it is listed with our office manager."
16. On April 16, 2019, the Student's IEP team met, including the Parent, a representative from Partnerships for Action, Voices for Empowerment (PAVE), the director, principal, general education teacher, special education teacher, SLP, and the school counselor. The meeting was scheduled to address the paraeducator shortage and determine available staff to help provide coverage during critical times when substitute paraeducators were not available. Meeting notes provided by the District show the team suggested using a general education paraeducator to support the Student during lunch.² The team also determined that the Student's special education teacher would offer "push in" services to the Student during reading, writing, and science in the general education setting—in place of paraeducator support. Staff agreed to meet again on May 7, 2019, to review the Student's progress under the new plan.
17. On April 19, 2019, the Student's quarterly progress reporting stated (in relevant part):

Social Behavior Goal: [Student] will say "Good morning", "Hi", or "Hello" when greeting adults or peers in the morning on 2 out of 5 days when prompted.	Progress: Needs prompt to ask peers, but will self initiate asking teacher sometimes. Student enjoys asking peers to play with him. Objective met.
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18. On April 19, 2019, the District issued a prior written notice following the April 16, 2019 meeting to address the special education paraeducator shortage and proposed the following changes (in relevant part):
- In order to support [Student] in the absence of a 1:1 para[educator] or 1:1 para[educator] substitute, the most critical times were determined. During each of the most critical times, a SPED teacher or para[educator] will assist [Student] as needed in the [general education] classroom for three, thirty minute periods. Proposing to support [Student] in the absence of a 1:1 para at the times that are most critical for [Student] to have assistance by:
1. Having a [general education paraeducator] check with [Student] at the end of lunch. The

² The prior written notice, dated April 19, 2019, stated that the team rejected having a currently employed general education paraeducator provide the Student with 1:1 support because to do so would be in violation of the terms of the general education paraeducator funding source.

para[educator] will help remind him not to dump his lunchbox from home, so that [Parent] can see how much/what he ate.

2. Have [special education] teacher or para[educator] assist [Student] during the 9:45-10:15 time (whole class reading time).

3. Have [special education] para[educator] assist [Student] during the 1:30-2:00 time (whole class math time).

4. Have [special education] teacher or para[educator] assist [Student] during the 2:45-3:15 time (whole class science time).

The District further stated in the "other factors relevant to the action" section, if any 1:1 special education paraeducators became available, they would provide the Student support as set forth in the IEP and the plan set forth in the prior written notice would be discontinued.

19. On May 7, 2019, the Parent, PAVE representative, principal, and the assistant principal met as a follow up to the April 16, 2019 IEP meeting. During the meeting, they discussed how the Student's absences impacted their ability to gather data on his progress with the new system in place, as the Student had only attended reading and math once, and had not attended science at all since the April 16 IEP meeting. According to the meeting notes, the District offered the Student "Extended school year because of lost instruction due to lack of 1:1 paraeducator."

The District's response to this complaint also proposed "thirty-six (36) hours of compensatory academic services," as a corrective action in response to this complaint.

20. On May 10, 2019, the special education teacher emailed the principal, assistant principal, and two of the Student's general education teachers and stated:

I have an initial draft of a behavior form to collect data on how [Student] is doing in the [general education] classroom. I would like the team to give feedback on whether these are good working definitions of behaviors we want to see [Student] achieving.

1. Completing 75% or more of assigned tasks within given time frame;
2. Requiring 3 or less teacher/para[educator] prompts within 15 minutes to be on task;
3. Asking permission or informing an adult before leaving the classroom or group for any reason.

We could increase or decrease the % of tasks completed. We could reduce the number of teacher/para[educator] prompts within 15 minutes. Also, if there [are] any more pressing concerns about his behavior we could replace any one of these as areas of focus.

21. That same day, the general education teacher responded, via email, and stated, "Maybe something about appropriately responding (Hand raised, not blurting, etc.)? Otherwise looks good to me."

22. On May 13, 2019, the Student's other general education teacher responded that she agreed with the information on the behavior form.
23. Based on documentation provided by the District, it appears the District used the behavior form from May 9 through May 31, 2019, for a total of 14 school days, of which the Student was absent three full days and 2 partial days.
24. The District's last day of the 2018-2019 school year was June 12, 2019.
25. According to the District's director, the District implemented the offered compensatory services. The Student started attending the compensatory services sessions on June 26, 2019, and services were provided from 8:30 to 11:45 am. The Student is scheduled to consider these services Monday through Friday, until July 12, 2019. No services were scheduled on July 4 or 5, 2019.
26. The District's director stated that if the District had not offered the compensatory services, the Student would not have otherwise qualified for ESY services.

CONCLUSIONS

The Parent alleged the District failed to provide the Student with paraeducator support consistent with his individualized education program (IEP) from December 2018 through May 13, 2019. A district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in the IEP.

The Student's November 2018 IEP, in effect during the timeframe of the Parent's complaint, stated the Student would have a 1:1 paraeducator. The Student's paraeducator went on maternity leave in January 2019, after which the District admitted it was unable to hire a consistent replacement due to a lack of applicants. Although the Student's IEP team met in April and May of 2019 to propose alternative support strategies and a behavior chart for the Student until a new paraeducator was hired, the Student continued to attend school without the 1:1 paraeducator support as set forth in his IEP. Due to the Student's absences, it was hard to determine the effectiveness of the alternative behavior supports and chart implemented May 9-31, 2019; however, progress reporting showed that despite challenges with behavior and focus, the Student continued to make progress on his academic and social emotional goals. The District acknowledged its failure to provide the Student with paraeducator support consistent with his IEP, despite its good faith effort, and OSPI finds that the District failed to implement the Student's IEP as written.

The District offered the Student compensatory services, which he has accessed. Given this offer and the fact the Student did continue to make progress, no further compensatory services are warranted. OSPI does have one lingering concern: there is no indication the paraeducator position has been filled or the original paraeducator will return next school year, or even that the Student's current needs require the same level of paraeducator support. Because the District has already acknowledged its implementation error, the District should take steps to prevent a similar

situation from arising next school year. Therefore, the District will be required to provide OSPI documentation that the paraeducator position for this Student has been filled. In the event that the District is unable to fill the position using traditional recruitment methods (i.e., posting the position), the District will need to reconvene the IEP team to develop a plan for paraeducator support based on the Student's unique disability related needs, amend the Student's IEP appropriately, and determine if, and the amount, of additional compensatory services needed to remedy the issue. The District must also explore and access other recruitment methods.

CORRECTIVE ACTIONS

By or before **August 30, 2019** and **September 13, 2019**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By or before **August 30, 2019**, the District will provide OSPI with documentation that the District has filled the paraeducator position in order to support the 1:1 paraeducator support levels provided in the Student's March 2019 IEP amendment ("1,410 minutes per week of 1:1 special education paraeducator support in general education settings and 330 minutes per week of 1:1 special education paraeducator support in special education settings"). This could include documentation that a new paraeducator has been hired or the Student's original paraeducator has returned from maternity leave.

The District must also explore and access other recruitment methods if the District is unable to fill the position using traditional recruitment methods (i.e., posting the position). If the position has not been filled *or* if the Student's needs no longer warrant the same level of support, the IEP team will discuss a plan for paraeducator support moving forward.

By or before **September 6, 2019**, the District will convene the Student's IEP team and discuss the plan for paraeducator support during the 2019-2020 school year. This could include a return to the levels of paraeducator support in the Student's March 2019 IEP amendment—or, if the position is not filled and/or the Student's needs have changed—the team will discuss a plan for paraeducator support based on the Student's unique disability related needs. If a new plan is developed, the team will amend the Student's IEP as needed. The team must also discuss and determine whether there is any need for, and the amount of, additional compensatory services to remedy the disruption in paraeducator support.

By **September 13, 2019**, the District will provide OSPI with the following documentation of the IEP meeting: (1) meeting invitation; (2) amended IEP, if applicable; (3) prior written notice; (4) any meeting notes; (5) any other plans for providing the Student support; and, (6) any other relevant documentation.

DISTRICT SPECIFIC:

None.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this ____ day of July, 2019

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
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THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)